

STATE OF INDIANA)
) SS:
COUNTY OF FAYETTE)

IN THE FAYETTE CIRCUIT COURT
21001- 0707 - PL - 213
CAUSE NO. _____

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
JARED DENMAN,)
)
Defendant.)

FILED
g cm
JUL 17 2007
Shirley A. [Signature]
CLERK OF FAYETTE CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this complaint, the Defendant, Jared Denman, was an individual engaged in the sale of items via the Internet from his principal place of business located in Fayette County at 774 South Roger Road, Connersville, Indiana, 47331.

FACTS

3. Since at least October 31, 2006, the Defendant has represented he would sell items to consumers.

A. Allegations regarding Consumer Patricia Hand's Transaction.

4. On or around October 31, 2006, the Defendant entered into a contract with Patricia Hand ("Hand") of Reno, Nevada, wherein the Defendant represented he would sell a Yamaha YAS-62 Alto Saxophone to Hand for a total price of One Thousand Four Hundred Twenty-Six Dollars (\$1,426.00), which Hand paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the saxophone within a reasonable period of time.

6. As of today, the Defendant has yet to either deliver the saxophone, or to provide a refund to Hand.

B. Allegations regarding Consumer Hiroshi Hinenoya's Transaction.

7. On or around November 12, 2006, the Defendant entered into a contract with Hiroshi Hinenoya ("Hinenoya") of Somerville, Massachusetts, wherein the Defendant represented he would sell a Limited Edition 2004 Taylor 30th Anniversary guitar to Hinenoya for a total price of One Thousand Seven Hundred Dollars (\$1,700.00), which Hinenoya paid.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the guitar within a reasonable period of time.

9. After contacting PayPal, an Internet payment service, Hinenoya received a partial refund of One Hundred and Seventy-Five Dollars (\$175.00).

10. The Defendant has yet to either provide a refund of the balance owed, or to ship the guitar to Hinenoya.

C. Allegations regarding John J. Martin's Consumer Transaction.

11. On or around March 13, 2007, the Defendant entered into a contract with John J. Martin ("Martin") of Monson, Massachusetts, wherein the Defendant represented he would sell a Sony VAIO Laptop Computer to Martin for a total price of Two Thousand Thirty-Nine Dollars and Ninety-Nine Cents (\$2,039.99), which Martin paid.

12. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the computer within a reasonable period of time.

13. After contacting PayPal, an Internet payment service, Martin received a partial refund of One Thousand Two Hundred Seven Dollars and Fifteen Cents (\$1,207.15).

14. The Defendant has yet to either provide a refund of the balance owed, or to deliver the computer to Martin.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

15. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above.

16. The transactions referred to in paragraphs 4, 7, and 11 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

17. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

18. The Defendant's representations to the consumers referenced above, Hand, Hinenoya, and Martin, that he would sell items to those consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 4, 7, and 11,

constitute violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

19. The Defendant's representations to the consumers referenced above, Hand, Hinenoya, and Martin, that he would be able to deliver the items, or otherwise complete the subject of the consumer transaction within a reasonable period of time, when the Defendants knew or reasonably should have known he could not, as referenced in paragraphs 5, 8, and 12, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

20. The Defendant's representations to the consumers referenced above, Hand, Hinenoya, and Martin, that the consumers would be able to purchase the items as advertised by the Defendant, when the Defendant did not intend to sell the items, as referenced in paragraphs 4, 7, and 11, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

21. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 20 above.

22. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 7, 8, 11, and 12, were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Jared Denman, and issue a permanent injunction, pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;
- b. representing, expressly or by implication, the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and
- c. representing expressly or by implication consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

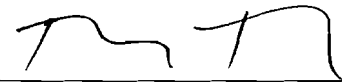
- a. cancellation of all of the Defendant's unlawful contracts with consumers, including but not limited to, Patricia Hand, Hiroshi Hinenoya, and John J. Martin;
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendant, including but not limited to Patricia Hand, Hiroshi Hinenoya, and John J. Martin, in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER
Indiana Attorney General
Atty. No. 4150-64

By:


Terry Tolliver
Deputy Attorney General
Atty. No. 22556-49

Office of the Attorney General
Consumer Protection Division
302 West Washington St., IGCS 5th Floor
Indianapolis, IN 46204
Telephone: (317) 233-3300